

The action immediately subsequent to the filing of a RCE with a submission and fee under 37 CFR 1.114 may be made final only if the conditions set forth in MPEP § 706.07(b) for making a first action final in a continuing application are met.

MPEP § 706.07(b) states,

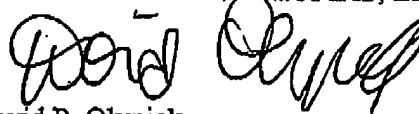
The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

However, it would not be proper to make final a first Office action in a continuing or substitute application where that application contains material which was presented in the earlier application after final rejection or closing of prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised.

The present application contains material, which was presented in the earlier application after final rejection or closing of prosecution (see Amendment filed May 8, 2003) but was denied entry because (A) new issues were raised that required further consideration and/or search (see Office Communication dated May 27, 2003). Thus, for this reason, as stated above, applicant believes the final office action was premature in that it is inconsistent with procedures cited in the MPEP.

Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,
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